

IN THE UNITED STATES COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PYROTECHNICS MANAGEMENT, INC,

Plaintiff,

v.

XFX PYROTECHNICS LLC,

FIRETEK.

Defendants.

* CIVIL ACTION-LAW

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* Case No.: 19-cv-00893

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* Hon. Robert J. Colville

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* **MOTION TO ISSUE A REQUEST**

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UNDER 17 U.S.C. § 411(b)(2)

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MOTION OF DEFENDANT FIRETEK FOR ISSUANCE OF A REQUEST UNDER 17 U.S.C. § 411(b)(2) TO THE REGISTER OF COPYRIGHTS

Defendant, FIRETEK by and through counsel moves for the Court to issue to the Register of Copyrights a request pursuant to 17 U.S.C. § 411(b)(2).

1. Defendant Firetek has continually alleged throughout this litigation that the Copyright Plaintiff seeks to protect is not valid for the purposes they assert.

2. Subject to 17 U.S.C. § 411 a copyright holder must register their works in accordance with the requirements of the Copyright Act before bringing a claim for copyright infringement.

3. 17 U.S.C. § 411(b)(1). The PRO IP Act also created a procedure for courts to seek the advice of the Register of Copyrights as to the effect of allegedly inaccurate information on the validity of a copyright registration. Section 411(b)(2) provides:

In any case in which inaccurate information described under paragraph (1) is alleged, the court shall request the Register of Copyrights to advise the court whether the inaccurate information, if known, would have caused the Register of Copyrights to refuse registration.

Id. § 411(b)(2).” Order on Motion for Issuance of Request to Register of Copyrights at 2-3, *Olem Shoe Corp. v. Washington Shoe Co.*, No. 09-23494 (S.D. Fla 2010).

4. Defendant FireTek alleges that Plaintiff knowingly provided inaccurate information to the Copyright Office and that, if known, the Copyright Office would have refused copyright registration. Defendant has further stated their position in their brief in support of this Motion.

5. Defendant respectfully requests that this Court issue a request to the US Copyright Office on the grounds set forth in their Brief filed contemporaneously with this Motion.

6. Defendant further requests that this case be staid until such time as the US Copyright Office issues a response to the request as a response from the US Copyright Office invalidating Plaintiff’s Copyright would render this litigation moot.

Dated: 5/14/2021

Respectfully submitted,

s/Louis J. Kroeck

Louis J. Kroeck
Attorney for Defendant FireTEK

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the within MOTION was served to all counsel through electronic means on May 14, 2021.

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Respectfully submitted,

s/Louis J. Kroeck

Louis J. Kroeck

Attorney for Defendant FireTEK